

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

BRUCE WAYNE HUEY,

Plaintiff,

v.

Case No. 7:12-cv-97 (HL)

**TED PHILBIN, CECILIA LINDER, COII
RIZER,**

Defendants.

ORDER

Before the Court is the Report and Recommendation of the Magistrate Judge, in which the Magistrate Judge recommends granting Defendant Philbin's Motion to Dismiss and granting Defendants Linder's and Rizer's Motion to Dismiss. For the reasons stated below, the Recommendation is adopted in full.

The Recommendation of the Magistrate Judge as to Defendant Philbin was based on a finding that Plaintiff's failure to exhaust his administrative remedies before filing suit, a prerequisite to litigation. In his Objection, Plaintiff argues that he satisfied the requirement to exhaust his administrative remedies. However, the evidence shows, and this Court agrees, that Plaintiff did not put forth sufficient evidence to demonstrate that he properly exhausted his remedies. As the Magistrate Judge pointed out in his Recommendation, Plaintiff failed to follow the grievance procedure properly. Plaintiff stated in his Objection that he takes issue with the grievance procedures, but this does not change the fact that

he is bound to comply with the procedures, even if he does not agree with them. Based on his failure to properly exhaust his administrative remedies, Plaintiff's claims against Philbin are barred and Philbin's Motion to Dismiss is granted.

The Recommendation of the Magistrate Judge as to the Motion to Dismiss filed by Defendants Linder and Rizer was based on the court's determination that Plaintiff did not state a claim upon which relief could be granted. Plaintiff objects to this finding, claiming that the Magistrate Judge's findings are inconsistent with previous determinations in the case. Plaintiff's claims were previously reviewed by this Court in an initial review, at which point the Court found that the claims against Linder and Rizer were sufficiently pled to move past the first stage. At the motion to dismiss stage, however, the Court has the benefit of Defendants' response to Plaintiff's claims, and the Court finds after review that the claims are not sufficient to state a claim for relief. Thus, the Motion to Dismiss filed by Defendants Linder and Rizer is granted.

All other objections filed by Plaintiff have been thoughtfully considered, along with Defendants' responses to Plaintiff's objections (Doc. 69). In light of this review, the Court finds that the Report and Recommendation of the Magistrate Judge shall be adopted and made order of the Court.

SO ORDERED, this 22nd day of July, 2013.

/s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

ebrs